

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TAMMY L. CULL and JAMES CULL,

Plaintiffs,

v.

Civil No. 05-71804
Hon. John Feikens

GENESYS REGIONAL MEDICAL CENTER,
A Domestic Nonprofit Corporation,

Defendant.

OPINION AND ORDER DISMISSING CASE AND DENYING COSTS AND FEES

On May 6, 2005, Defendant moved to dismiss or for summary judgment on the entirety of Plaintiffs' Complaint. Although initially, through their attorney, Plaintiffs opposed this motion, since their attorney's death and subsequent inability to find another attorney, Plaintiff Tammy Cull now states that she "desire(s) to have this case closed."¹ (Pl.'s Reply to the Response to the Motion to Dismiss, 2.) Both parties appear to desire that result, and therefore, I DISMISS this case.

Defendant also seeks "costs and attorney's fees" for preparing and arguing the motion, and Plaintiff Tammy Cull opposes this request. Defendant cites no statutory authority for that claim, which is contrary to the general rule. Alyeska Pipeline Service Co. v. Wilderness Society, 421 U.S. 240 (1975). Therefore, I will consider this request under Fed. R. Civ. P. 11, which allows such fees if the lawsuit is unwarranted and frivolous. I DENY the request for costs and

¹Defendant's contention that Plaintiffs' claim under the Michigan Whistleblower's Act could not go forward seems to me to be correct, because Tammy Cull did not argue that she complained to a government agency, which is a requirement under that law. M.C.L. § 15.362. Therefore, her husband could no longer remain a party to this case, even if he wished to do so.

fees, because Plaintiff's attempt to bring the Labor Management Relations Act claim is not clearly unwarranted or frivolous. The Supreme Court and Sixth Circuit have held that an employee may sue her employer for breach of a collective bargaining agreement even if she does not also sue her union. Trollinger v. Tyson Foods, Inc., 370 F.3d 602, 617 (6th Cir. 2004).

Therefore, I GRANT in part and DENY in part Defendant's motion, dismissing the case but denying any attorney's fees or costs.

IT IS SO ORDERED.

Date: May 9, 2006

s/John Feikens
United States District Judge

Proof of Service

I hereby certify that the foregoing order was served on the attorneys/parties of record on May 9, 2006, by U.S. first class mail or electronic means.

s/Carol Cohron
Case Manager